IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.20 OF 2000

IN

WRIT PETITION NO.2328 OF 1991

The Bombay Catholic Co-op. Hsg. Society Ltd. ...Appellant.

vs.

1.V.B.Mathankar & others. ...Respondents.

---

Mr.V.A.Thorat with Mr.J.Reis, V.B.Naik & D.R.Mehta i/b. M/s.Dhruve Liladhar & Co., for Appellant.

Mr.Kevic Setalwad with Ms.Meeta Dagli i/b. M/s.Mulla & Mulla & CBC, for Respondent nos.8 to 11, 5, 16, 18, 19, 24 to 26, 29, 32, 33, 36 to 40, 42 to 46, 47, 49, 51 & 53.

Mr.R.Mane, A.G.P., for Respondent nos. 1 to 6.

**CORAM: D.K.DESHMUKH &**

**J.H.BHATIA, JJ.**

**DATED: 4th August,2007.**

**P.C**.:-

1. By this appeal, the appellant challenges the order passed by the learned Single Judge in Writ Petition no.2328 of 1991. That petition was filed by the appellant-society and the learned Single Judge has dismissed that petition.

2. The facts that are material and relevant for deciding this appeal are that the petitioner-society was registered under the provisions of the Central Societies Registration Act,1912 in the year 1917. The society had purchased plots of land from private parties, Bandra Municipality and the Government. Land was also purchased by the societies from one N.Nanabhoy Bharucha. Certain plots of land were given by the Society on lease to its members. On a part of the land, the buildings were constructed by the Society

itself and they were given to the persons on lease and those tenants were also the members of the society. It appears that the tenant members of the society addressed a letter to the Deputy Registrar, Maharashtra Co-operatives Societies dated 3.6.1979 for bifurcation of the appellant-society into two societies. It appears that the appellant-society is the member of the Greater Bombay & Thana District Co-operative Housing Federation Ltd. which is a federal society in so far as the appellant-society is concerned. It appears that a letter dated 1.8.1979 was addressed by the Deputy Registrar to the Federal Society. Pursuant to that letter, the federal Society wrote a letter dated 31.8.1979 informing the Registrar that the letter was placed before the meeting of the Board of Directors of the Federation held on 24.8.1979 and that the Board of the Federation has decided to recommend the proposed bifurcation of the petitioner-society. It appears that, thereafter, the Deputy Registrar

issued a notice to the appellant-society dated 6.9.1979 alongwith the draft bifurcation order seeking its opinion. The Society by letter dated 15.10.1979 informed the Deputy Registrar that it has decided to call general body meeting for assessing views of the members of the general body on the draft order. The petitioner-society has also incorporated some of the objections that it had to the draft order. It appears that the petitioner-society had also approached the federal society. The federal society had inspected the site and thereafter, the federal society addressed a letter dated 7.6.1980 to the Deputy Registrar noting therein that in its opinion, the case for division of the Society is not made out. It appears that after receiving this opinion from the Federal society the Deputy Registrar by order dated 27.6.1980 decided to drop the further proceedings pursuant to the draft bifurcation order. Against that order an appeal was filed before the Divisional Joint

Registrar. That appeal was decided by the Divisional Joint Registrar by his order dated 15.6.1982. The Divisional Joint Registrar by that order held that the Deputy Registrar was not justified in dropping the further proceedings pursuant to the draft bifurcation order. According to him, the Deputy Registrar should have proceeded further and therefore, the appellate authority set aside the order passed by the Deputy Registrar and directed the Deputy Registrar to proceed further in the matter from the stage of draft bifurcation order dated 6.9.1979. It appears that this order was challenged by the petitioner-society but the revision filed by the Society was not decided till final order after remand was made. Pursuant to the order dated 15.6.1982, the proceedings were taken up by the Assistant Registrar, Co-operative Societies and he made an order dated 22.2.1983 ordering bifurcation of the petitioner-society into two societies. It appears that the

petitioner society filed Writ Petition no.708 of 1983 before this Court challenging the order passed by the D.D.R. That petition was decided by order dated 5.10.1988. By that order this Court held that appropriate remedy for the petitioner society to challenge the order of the D.D.R. is appeal provided by the Act. This Court therefore, did not interfere with the order of the D.D.R. It appears from the order passed by this Court that principle reason why the Society instead of filing appeal approached this Court in its writ jurisdiction was the observations made by the Divisional Joint Registrar in his order dated 15.6.1982. The Society apprehended that in view of those observations the remedy of appeal before the same authority i.e. Divisional Joint Registrar would not be an effective remedy. It appears that in view of this apprehension of the Society this Court while relegating the society to the remedy of appeal made following observations:-

"It was also claimed on behalf of the Society that the Registrar might be influenced by the observations and the directions given by the Divisional Joint Registrar in his order dated June 15, 1982 in appeal preferred by the tenant members. A copy of this order is annexed as Ex."J" to this petition. The Registrar, who will hear the appeal is directed to ignore any observations made in the body of the order and any of the directions as to what steps should be taken in case the order of bifurcation is passed. The Registrar should bear in mind that the appeal is to be heard on merits and is to be decided in accordance with the provisions of Section 18 of the Act and whatever has transpired earlier and whatever directions have been given in the matter by any officer under the Co-operative Societies Act should be ignored. The Registrar should hear the appeal afresh without taking into consideration any observations or directions made in the order dated June 15, 1982. It is always open for the

> Registrar, in case, the order of bifurcation is to be passed on merits, then to give further requisite directions, but this observations should not be misinterpreted as the suggestion by this Court that the bifurcation is desirable. It is open for the parties to produce any further material in support of their respective claims, if so advised.
>
> In view of the directions now given, the revision application filed by the petitioner Society before the State Government against the order dated June 15, 1982 passed by the Divisional Joint Registrar and which is pending for all these years does not survive."

Perusal of the above quoted observations shows that the appeal was to be decided on its own merits ignoring the direction contained in the order dated 15.6.1982. The appeal was decided by the appellate authority by order dated 19.9.1989. The appeal was dismissed. A revision filed

before the State Government against both the orders met the same fate. Therefore, ultimately writ petition no.2328 of 1999 was filed in this Court challenging the bifurcation order. That petition has been dismissed by order dated 22.10.1999. It is this order which is challenged in the appeal.

3. Before us, the orders were challenged only on one ground viz. that the order of bifurcation has not been made by the Deputy Registrar after complying with the requirements of Section 18 of the Maharashtra Co-operative Societies Act and Rule 17 of the Maharashtra Co-operative Societies Rules. It is submitted by the learned Counsel appearing for appellant that Section 18 of the Act requires that an order for bifurcation of a Co-operative society shall be made after consultation with the federal society. According to the learned Counsel in the present case there has been no effective consultation

between the federation and the Deputy Registrar. The learned Counsel relies on the judgment of the learned Single Judge of this Court in the case of “Shri.Ravindra V. Gaikwad & others Vs. The State of Maharashtra & others, 2002(2) ALL MR 489.”. The learned Counsel submits that the learned Single Judge after considering the judgments of the Supreme Court and this Hon'ble Court has laid down that the requirements of consultation is mandatory and that in order that the requirements of consultation is complied with firstly the material which is before the Registrar should be made available to the federation which is to be consulted and that the order that is passed by the Registrar after the consultation must shows on its face that the Registrar has complied with the requirements of consultation and has applied his mind to the opinion given by the Federation Society. The learned Counsel appearing for respondents, on the other hand, submits that consultation with the federal society under the

scheme of Section 18 of the Act and Rule 17 of the Rules, is to be made by the Registrar with the federal society only before preparing the draft scheme. After the draft scheme is prepared no consultation with the federation is necessary. It is further submitted that even if consultation with the federation after the draft order is necessary, in the present case that has been done. Though the Registrar did not forward the reply of the petitioner-society, submitted by the society after the service of draft order on the society to the federation, the petitioner-society then approached the federation and the federation submitted its revised opinion. On the basis of that revised opinion, the Registrar dropped the proceedings. That order was challenged before the appellate authority. The appellate authority considered the reply of the society as also the opinion of the federation and has directed the Deputy Registrar to proceed further in the matter of bifurcation of the society. Therefore,

according to the learned Counsel, the requirement of consultation with the federal society is complied with in the present case. The learned Counsel therefore, submits that as the order has been made in compliance with the requirement of Section 18 of the Act and Rule 17 of the Rules, this Court should not disturb the order made by the learned Single Judge.

4. Perusal of the order of the learned Single Judge shows that he has held that the requirement of the Registrar consulting the federal Society contained in Section 18 of the Act is mandatory. According to him, the Deputy Registrar has complied with that requirement by consulting the Federal Society before preparing the draft order. The learned Single Judge has held that a process of making an order for bifurcation of Society is divided in two stages viz. (i) preparation of the Draft order, (ii) Service of the Draft order on the Society

proposed to be bifurcated and consideration of objection if any raised to the draft order. According to him, the Registrar has to consult the Federal Society only in the first stage, no consultation is required with the federal society in the second stage. So far as this aspect of the matter is concerned, following are the admitted facts:-

(i)Before preparing the draft order the Deputy Registrar wrote a letter to the Federal Society.

(ii) The federal Society informed the Deputy Registrar that it has no objection to the proposal.

(iii) A copy of the draft order was sent by the Deputy Registrar to the Federal Society for information and necessary action.

(iv) The petitioner society objected to the draft order, but the Deputy Registrar never sent copy of the objection raised by the Society to the Federal Society.

(v) The federal society communicated its opinion against the draft order to the Deputy Registrar.

(vi) The Deputy Registrar has not taken into consideration the objection of the federal society while making the final order. In fact has not even referred to that objection in the order.

Now in this background, we have to first consider the provisions of Section 18 of the Act. It is sub-sections (1) and (2) of Section 18 of the Act which are relevant for our purpose, they read as under:-

> “18. Power to direct amalgamation, division and reorganisation in public interest, etc:- (1) Where the Registrar is satisfied that it is essential in the public interest or in the interest of the co-operative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any

society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last preceding section but subject to the provisions of this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the Official Gazette, provide for the amalgamation, division or reorganisation of those societies into a single society, or into societies with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations as may be specified in the order." (emphasis supplied)

(2) No order shall be made under this section, unless-

(a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned;

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and

> objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.”

Perusal of the above quoted provisions of Section 18 of the Act shows that there are two conditions to be complied with by the registrar before making an order for bifurcation of a co-operative society viz. (i) consultation with the federal society and (ii) consideration of the objection raised by the society, its members and creditors. Rule making power of the State Government in this regard is contained in Section 165(2)(iv) of the Act, it reads as under:-

> “165 (2) In particular, and without prejudice to the generality of the

foregoing power, such rules may-

(iv)prescribe the procedure to be followed and conditions to be observed for change of name or liability, amalgamation, transfer, division, conversion, or reconstruction of society;”

Reading of the above quoted provision shows that by a Rule the State Government can prescribe procedure to be followed for division of a society. By a Rule, the State Government can also prescribe conditions for division of a society. It is clear that the Rule making authority does not by virtue of the provisions of Section 165 of the Act get power to dilute any of the conditions imposed by the provisions of Section 18 of the Act. In exercise of this Rule making power the State Government has framed Rule 17 of the Maharashtra Co-operative Societies Rules 1961 (hereinafter referred to as the Rules). It is sub rule (1) of Rule 17 of the

Rules which is relevant for our purpose, it reads as under:-

> “17. Direction by Registrar for amalgamation, division and reorganisation of societies.:- (1) Before issuing any order under sub-section (1) of section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committees of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the bye-laws which such society or societies shall follow. The Registrar shall then consult such federal society, as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed

> to be issued by him under sub-section (1) of section 18, to the society or each of the societies concerned calling upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them."

Perusal of the above Rule shows that Rule 17 of the Rules incorporates additional condition of the Registrar consulting the federal society even in the process of preparing draft scheme of bifurcation. The submission on the basis of the provisions of Rule 17 of the Rules on behalf of the respondents is that the requirement of consultation with the federation is only before the preparation of draft scheme. According to the learned Counsel, it is not necessary for the

Registrar to consult the federation after the preparation of draft scheme. If the provisions of sub-section (1) of Section 18 of the Act are read with the provisions of Rule 17 of the Rules, it becomes clear that reading of rule in the manner as is suggested by the learned Counsel appearing for respondents, will amount to diluting the requirement incorporated in Section 18 of the Act of consulting the federation before making the order of bifurcation. Under Section 18 of the Act, the Registrar before making the order of bifurcation apart from consulting the federal society has also to take into consideration the objections raised by the members of the society etc. If the construction placed by the learned Single Judge on the provisions of Section 18 of the Act and Rule 17 of the Rules is accepted, then the process of consultation with the federal society would be over with the preparation of the draft order. The federal society would be totally excluded from

the further process. Section 18 of the Act requires the registrar to consult the federal society before making the order of bifurcation. The Supreme Court in its Judgment in the case of “Indian Administrative Service (S.C.S) Assocation, U.P. And others vs. Union of India and others, 1993 Supp(1) Supreme Court Cases 730” has observed that consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. Therefore, when sub-section (1) of Section 18 of the Act requires the Registrar to consult the federation before making the order of bifurcation, it requires him to make available to the federation, before he makes the order of bifurcation, all the material which he has to consider for making the order of bifurcation, and that can be achieved by the Registrar only if the Registrar after the draft order is prepared,

sends a copy of that draft order to the federation and also sends a copy of the objection that he may have received from the society, its members etc to the federation. As the requirement of the provision for consultation is that all the material which the authority proposes to take into consideration for making the order has to be made available to the body to be consulted, the registrar will have to send the objection received to the draft order to the federal society and will have to take into consideration the opinion submitted by the federal society while considering the question whether bifurcation order is to be made or not. It is to be noted that section 18 of the Act requires the registrar to consult the federal society before making the order of bifurcation and not only before preparing draft order of bifurcation. In the present case, however, we find that so far as the procedural requirement of consultation with the federal society is

concerned, it is substantially complied with inasmuch as the Registrar in fact forwarded a copy of the draft order to the federation and though after the Registrar received the reply from the Society, he did not forward that reply to the federation, nevertheless the Society approached the federation and appraised it of its point of view and then, the federation submitted its opinion to the Registrar. In our opinion, the flaw in the order is that the final order of bifurcation which is made by the Registrar does not on its face show that the Registrar has applied his mind to the opinion submitted by the federation in relation to the draft order of bifurcation. Perusal of the Judgment of the learned Single Judge shows that according to him the Registrar was not obliged to take into consideration the opinion, of the federal society because the opinion of the federal society has to be taken into consideration by the Registrar only for making

draft order of bifurcation and not the final order of bifurcation. We have observed above that according to the provisions of Section 18 of the Act read with Rule 17 of the Rules, the Registrar has to take into consideration the opinion expressed by the federal society at both the stages i.e. at the stage of making draft order and at the stage of making the final order. It was submitted by the learned Counsel appearing for respondents that it was not necessary for the Registrar to consider the opinion of the federation because that opinion was considered by the appellate authority when it passed the order dated 15.6.1982 and has held that on the basis of that opinion, the Registrar was not justified in dropping the proceedings. In our opinion, the submission made by the learned Counsel is not well founded. We have referred to the judgment dated 5.10.1988 of the learned Single Judge of this Court in Writ petition no.708 of 1983 above. By that judgment the Divisional Joint Registrar

was directed to decide appeal against the final order of bifurcation ignoring the order dated 15.6.1982 passed by the appellate authority. It is thus clear that the Deputy registrar was also to decide whether to make the order of bifurcation on the basis of the material on record, without being influenced by the observations in the order dated 15.6.1982, because those observations were made for a different purpose i.e. to find out whether the Deputy Registrar was justified in dropping the proceedings because the federal society had expressed opinion against the proposal. Had the appellate authority formed final opinion it would not have remanded the matter back. It is therefore, clear that the appellate authority wanted the Deputy Registrar to consider the entire material on record again for the purpose of deciding whether the bifurcation order is required to be made or not. While considering it, the observations made by the appellate

authority in the order dated 15.6.1982 would not be binding on the Deputy Registrar because those observations were made though on the basis of the same material but for a different purpose, but the Deputy Registrar was to consider, though it may be the same material, for a different purpose. So far as the question whether the condition of consultation with the federal society incorporated in Section 18 of the Act is mandatory or not is concerned, the learned Single Judge proceeded on the footing that the condition is mandatory. Even before us nobody has submitted otherwise. It may be pointed out that Section 78 of the Act deals with removal of a managing committee of Co-operative Society. It also requires the Registrar to consult federal society before making the order of removal. Similar provision for consultation with the federal body has been made in the Maharashtra A.P.M.C. Act. There are a series of judgments of different Division Benches of this Court holding

the condition of consultation with the federal body mandatory. One of such judgment is the judgment in the case of “Agricultural Produce Market Committee, Dharni & others Vs. District Deputy Registrar, Co-operative Societies, Amravati, 1986 Mh.L.J. 374”. In our opinion, therefore, in order to comply with the mandatory requirement of consultation which is incorporated under sub-section (1) of Section 18 of the Act, it was necessary for the Deputy Registrar not only to take into consideration the opinion expressed by the federation but in order to show that he has complied with the mandatory requirements of consultation and the order that he made should also have shown that he has applied his mind to the opinion expressed by the federation. The requirement of the order made by the authority indicating on the face of it that the authority has applied its mind to the opinion submitted by the federation, will have to read into the provisions in order to make the

requirement of consultation effective and meaningful. In the present case, admittedly, the opinion expressed by the federation has not been considered by the Deputy Registrar while deciding to make the order of bifurcation. It therefore, suffers from violation of mandatory requirement of consultation with the federal society, and therefore, we have no alternative but to set aside that order. But because the proposal had been submitted as far back as in the year 1979 and the final decision in that regard has not yet been taken, we propose to issue directions to the authority so that a decision can be made by the authority as expeditiously as possible.

5. In the result, therefore, the appeal succeeds and is allowed. The order dated 22.2.1983 passed by the Deputy Registrar, Co-operative Societies directing bifurcation of the petitioner-society is set aside. The orders passed by the Authorities under the Maharashtra

Co-operative Societies Act and the learned Single Judge confirming that order are also set aside. The proceedings are remitted back to the Deputy Registrar. The parties shall appear before the Deputy Registrar on 27.8.2007 with a copy of this order. The petitioner shall also serve a notice on the federation with a copy of this order informing the federation that if it is so advised it may appear before the Deputy Registrar on 27.8.2007. The Deputy Registrar shall thereafter permit the parties to file any additional affidavits and documents that they may want to file and then proceed to pass final order in the matter in accordance with law. The Registrar shall proceed as expeditiously as possible, and the final order shall be made by him in any case within a period of Eight weeks from 27.8.2007. It is directed that in case the Registrar decides to make the order of bifurcation, the Registrar shall provide in the order that the order shall not take effect for a period of four weeks from

the date of making of the order.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)

---